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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WEST COAST MEDICAL SERVICES et al., Plaintiffs and Respondents, v. JEFFREY FLANNERY et al., Defendants and Appellants.	B231950 (Los Angeles County Super. Ct. No. LC040440)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael B. Harwin, Judge. Affirmed with directions.

Law Offices of Anthony E. Bell, Inc., and Anthony E. Bell for Defendants and Appellants.

No appearance for Plaintiffs and Respondents.

Defendants Jeffrey Flannery and Flannery Communications appeal from the trial court's denial of a motion for relief from a default judgment entered in 1998 and renewed in 2007. We affirm with directions to the trial court to reduce the amount of the judgment.

STATEMENT OF THE CASE

On March 7, 1997, plaintiffs West Coast Medical Services and Gabriel Hertzberg (collectively, West Coast) filed a complaint asserting causes of action for breach of contract, intentional infliction of emotional distress, and intentional interference with contract against Jeffrey Flannery and Flannery Communications (collectively, Flannery). The complaint alleged that in April 1996, West Coast and Flannery agreed to start a joint business venture. The parties agreed that, in exchange for 5 percent of the gross receipts of the business venture, West Coast would make a capital investment of $5,000, lease telecommunications equipment, and make the down payments on the equipment leases. Flannery agreed to assume all leases and return to West Coast the $5,000 initial investment and all down payments within three months of the acquisition of the leases. In about June 1996, Flannery breached the agreement by failing to make the scheduled lease payments, pay West Coast 5 percent of the venture's gross receipts, and return West Coast's $5,000 initial investment. As a result of Flannery's conduct, "Plaintiffs no longer are deemed to be credit worthy, and have lost all reputation and credibility in the telecommunications business community. Plaintiffs are no longer a viable competitor for business in the telecommunications business community. Plaintiffs therefore have suffered and will suffer damages in the sum of $100,000.00 per annum." West Coast prayed for monetary damages, medical and related expenses, exemplary and punitive damages, and attorney fees "according to proof," plus "costs of suit herein."

Flannery did not answer the complaint.

West Coast filed a request for entry of default, and the court entered Flannery's default on July 29, 1998. On November 18, 1998, the court entered a default judgment

for West Coast "in the sum of $300,000.00 general damages, $5,000.00 special damages plus interest of $1,250.00, $300,000.00 punitive damages and $418.00 in costs for a total of $606,668.00."

West Coast renewed the judgment on August 28, 2007.

Approximately 12 years after the judgment was entered, on October 29, 2010, Flannery filed a motion to set aside the default judgment. The trial court denied the motion on January 26, 2011, finding that "the Court is not satisfied that sufficient cause has been set forth to grant the relief requested." Flannery timely appealed.[1]

DISCUSSION

Flannery contends that the default judgment is void pursuant to Code of Civil Procedure section 580 because "Respondent's Complaint failed to contain any amount(s) in its prayer for damages, but instead requested damages 'according to proof.'"[2] He therefore urges that we "reverse and remand the case, directing the Trial Court to enter an order granting [Flannery's] motion to vacate the default Judgment, and to permit the filing of [Flannery's] proposed answer." We consider this issue below.

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[1] West Coast did not file either an opposition to the motion to set aside the default judgment or a respondent's brief. On April 9, 2012, we notified West Coast that if it did not file a respondent's brief within 15 days, the appeal would be submitted for decision on the record and appellants' opening brief. Subsequently, we determined that appellants' opening brief had not been served on West Coast's counsel at his current address of record (as indicated on the State Bar's web site), and thus we re-sent notice to that address. Having received no response, the case has been submitted for decision on the record and appellants' opening brief.

[2] All further statutory references are to the Code of Civil Procedure.

I. Applicable Legal Principles

A. After Six Months, the Judgment May Be Set Aside Only if Void

Although a trial court has discretion to vacate the entry of a default or default judgment, such discretion may be exercised only after the party seeking relief has shown that there is a proper ground for relief and that the party has raised that ground in a procedurally proper manner, within any applicable time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495 (*Cruz*), citing Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2003) ¶ 5:276 et seq., p. 5-66 et seq. (rev. # 1, 2006) [describing various grounds, procedures, and time limits applicable to seeking relief from default].) The proper procedure and time limits vary, depending on the asserted ground for relief. (*Cruz*, *supra*, at p. 495.)

Flannery appeared to premise his motion on section 580, but that section does not empower a court to grant relief from an erroneously-entered default judgment. That is, while section 580 limits the relief that may be granted by a default judgment, it does not permit a court to vacate a judgment that violates its terms.

Authority to vacate judgments violative of section 580 is provided, in some circumstances, by section 473, subdivision (d). That section provides: "The court may, . . . on motion of either party after notice to the other party, set aside any void judgment or order." Section 473, subdivision (d) thus permits a court to set aside a judgment, even years after it was entered, if the judgment is *void.* However, "[a] trial court has no statutory power under section 473, subdivision (d) to set aside a judgment that is not void: Once six months have elapsed since the entry of a judgment, 'a trial court may grant a motion to set aside that judgment as void only if the judgment is void on its face.' (*Dill v. Berquist Construction Co*. (1994) 24 Cal.App.4th 1426, 1441 . . . .)" (*Cruz*, *supra*, 146 Cal.App.4th at pp. 495-496.) The issue on appeal, therefore, is whether the default judgment entered in the present case violates section 580 and, if so, whether it is void.

B. A Default Judgment Is Void If It Grants Relief Greater Than That Pled in the Complaint

Section 425.10, subdivision (a)(2) provides that a complaint "shall" contain "[a] demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated." The demand for relief is a constraint on a default judgment should the defendant fail to appear in the action: Under section 580, subdivision (a), "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint."

Section 580 "must be strictly construed. (*Greenup v. Rodman* [(1986)] 42 Cal.3d [822,] 826.) In *Becker v. S.P.V. Construction Co.* [(1980)] 27 Cal.3d 489, the court stated, 'The notice requirement of section 580 was designed to insure fundamental fairness. Surely, this would be undermined if the door were opened to speculation, no matter how reasonable it might appear in a particular case, that a prayer for damages according to proof provided adequate notice of a defaulting defendant's potential liability. If no specific amount of damages is demanded, the prayer cannot insure adequate notice of the demands made upon the defendant. [Citation.]' (*Id*. at p. 494.)" (*Stein v. York* (2010) 181 Cal.App.4th 320, 325.)

For this reason, if a default judgment awarded against a defendant exceeds the relief demanded in the complaint, the defendant is deemed to have been "'effectively denied a fair hearing [citations]' (*Matera v. McLeod* (2006) 145 Cal.App.4th 44, 61). Thus, a default judgment in an amount greater than the amount demanded is void and subject to either direct or collateral attack. (*In re Marriage of Lippel* [(1990)] 51 Cal.3d [1160,] 1163.)" (*Stein v. York, supra,* 181 Cal.App.4th at p. 326.)

A complaint that merely prays for damages according to proof without specifying any amount cannot satisfy section 580. (*Stein v. York, supra,* 181 Cal.App.4th at p. 327.) "Where a judgment is void, it must be vacated. (See *Burtnett v. King* (1949) 33 Cal.2d 805, 808; see also *In re Marriage of Lippel, supra,* 51 Cal.3d at p. 1163.)" (*Stein v. York, supra,* at p. 327.)

II. The Relief Granted in the Present Case Exceeds What Was Sought in the Complaint

As we have said, the complaint's prayer for relief sought monetary, exemplary, and punitive damages "according to proof." Flannery contends that because West Coast did not quantify its damages in its prayer for relief, a default judgment in any amount is void. For the following reasons, we conclude that the judgment is not void. However, because the relief granted exceeds what West Coast sought in its complaint, the judgment must be reduced.

A. Compensatory Damages

Flannery unquestionably is correct that the complaint's prayer for relief did not plead compensatory damages with specificity; instead, it sought only damages "according to proof." However, the prayer for relief is not the only relevant portion of the complaint for purposes of determining compliance with section 580. Instead, courts may look "to the prayer of the complaint *or* to 'allegations in the body of the complaint of the damages sought' to determine whether a defendant has been informed of the 'maximum liability' he or she will face for choosing to default. [Citation.]" (*People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 667; see also *Greenup v. Rodman*, *supra*, 42 Cal.3d at p. 829 ["the allegations of a complaint may cure a defective prayer for damages"].)

National Diversified Services, Inc. v. Bernstein (1985) 168 Cal.App.3d 410 is instructive. There, the plaintiff alleged that it agreed to purchase two Ferrari automobiles for a total price of $75,284, and to pay for them in part by conveying a boat with a trade-in value of $22,500. The plaintiff alleged that it conveyed the boat, but defendants refused to deliver the automobiles. It sought specific performance or, alternatively, "'damages which are in excess of $10,000,' and return of the boat." (*Id*. at p. 412.) Defendant failed to answer the complaint, and the court entered a default judgment of $56,779.89. (*Ibid*.) Defendant appealed, contending that the judgment was void because it awarded damages in excess of those pled. The court noted that the complaint alleged damages "in excess of $10,000," and "[c]onsidering only this allegation, it would be

improper to grant a default judgment in excess of $10,000." (*Id*. at p. 418.) However, the court noted that the complaint also sought return of the boat, entitling it in the alternative to the boat's value. (*Ibid.*) The court therefore concluded: "The largest money judgment that we can say defendant was on notice of would be $32,500, representing $22,500 for the value of the boat and $10,000 for its detention. When a default judgment is partially void for being excessive, an appellate court will strike the excess and affirm the valid portion. [Citation.] [¶] We therefore modify the default judgment by deleting the unwarranted amount, and affirm a default judgment in the principal amount of $32,500." (*Id*. at p. 419.)

The court reasoned similarly in *People ex rel. Lockyer v. Brar*, *supra*, 134 Cal.App.4th 659. There, the Attorney General sued a private attorney to force him to stop filing "shakedown" lawsuits against small businesses under the unfair competition law. (Bus. & Prof. Code, § 17200 et seq.) The complaint sought an injunction and civil penalties "'of $2,500.00 for each violation of Business and Professions Code section 17200 as proven at trial, but in an amount of not less than $1,000,000.00.'" (*Id*. at p. 667.) The attorney failed to answer the complaint, and the court entered a default judgment of $1,787,500 against him. (*Id*. at pp. 661-662.) The attorney then attacked the judgment on the grounds that it exceeded the relief requested in the prayer for relief. (*Id*. at p. 666.)

The Court of Appeal affirmed the award of civil penalties. It noted that the Attorney General's complaint alleged that the attorney had filed 14 "shakedown" lawsuits, and that as to three of those lawsuits, 1,500 nail salons were involved. The complaint sought penalties under Business and Professions Code section 17206, which provided penalties of $2,500 for each violation of the unfair competition law. Thus, the court concluded, the complaint "gave fair warning of an exposure of at least $2,500 times 1,500, which is $3.75 million, which is more than the $1,785,000 in the default judgment." (*Id*. at p. 668.)

In the present case, West Coast alleged that as a result of Flannery's breach of contract, it sustained "substantial monetary damage," including (1) "[l]oss of use of

monetary investment [of $5,000] plus interest," and (2) "damages in the sum of $100,000.00 per annum" for loss of "reputation and credibility in the telecommunications business community." The complaint therefore put Flannery on notice that West Coast was seeking damages of $5,000, plus $100,000 per year for past and future reputational damages.

When the trial court entered the default judgment in November 1998, approximately two and a half years had passed since the alleged breach of contract in June 1996. Flannery therefore was on notice that West Coast was seeking at least $250,000 ($100,000 per year x 2.5 years) for past damages to its professional reputation, plus $5,000 for loss of its monetary investment. The trial court had jurisdiction to award compensatory damages in this amount.

B. Punitive Damages

As we have said, section 425.10, subdivision (a)(2) provides generally that a complaint must contain the amount of damages to which the plaintiff claims to be entitled. Civil Code section 3295, subdivision (e), however, carves out an exception for punitive damages; it provides that "[n]o claim for exemplary [i.e., punitive] damages shall state an amount or amounts." (See also *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1521.)

Section 425.115 provides a method for satisfying the due process requirement of notice while honoring the bar against pleading a specific amount of punitive damages. Subdivision (b) of that section provides that the plaintiff "preserves the right to seek punitive damages . . . on a default judgment by serving upon the defendant" a statement identifying the amount of punitive damages the plaintiff intends to seek.

There is no indication in the present record that West Coast ever served on Flannery a statement of damages as required by section 425.115. Therefore, the trial court erred in awarding West Coast punitive damages. (See *Gudarov v. Hadjieff* (1952) 38 Cal.2d 412, 418.)

C. Interest and Costs

"Interest is in the nature of damages which the law allows for the wrongful detention of money which should be turned over to the person entitled to it. [Citations.] Unlike other items of special damage, no evidence is necessary to establish a plaintiff's right to the legal rate of interest as damages for the wrongful detention of his money. [Citation.] It is well established, consistent with the liberal rule enunciated in section 580 of the Code of Civil Procedure [fn. omitted], that in a contested case interest may be awarded, if the plaintiff is entitled thereto, notwithstanding the complaint contains no prayer for interest." (*Sears, Roebuck & Co. v. Blade* (1956) 139 Cal.App.2d 580, 595.) Similarly, fees and costs do not fall within section 580 and, thus, are recoverable even though an unspecified amount is demanded in the complaint. (See *Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1289.)

Based on the foregoing, we conclude that the trial court did not exceed its jurisdiction in awarding interest and costs to West Coast.

III. Remedy

"[W]here the amount demanded must be set forth in the complaint and the plaintiff recovers a default judgment for more than that amount, the underlying default is valid even though the default judgment is void. (See *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1743 ['Vacating the default judgment has no necessary effect on the underlying default and simply returns the defendant to the default status'].) 'Ordinarily when a judgment is vacated on the ground the damages awarded exceeded those pled, the appropriate action is to modify the judgment to the maximum amount warranted by the complaint.' (*Ostling*, at p. 1743.)" (*Van Sickle v. Gilbert*, *supra*, 196 Cal.App.4th at pp. 1521-1522.) In the present case, West Coast gave notice to Flannery that it claimed $255,000 in compensatory damages, plus interest. While an award in excess of $255,000 (plus interest and costs) would be improper, a judgment in that amount is within the jurisdiction of the court.

DISPOSITION

The trial court is directed to modify and reduce the judgment to $255,000 plus interest and costs. As modified, the judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.